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In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 186

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

ALBERT FRIED

No. 187

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

BENJAMIN EINHORN

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the Circuit Court of Appeals for the Second Circuit (R. 28–31) is reported in 83 F. (2d) 193. The opinion of the Board of Tax Appeals (R. 17–23) is reported in 31 B. T. A. 638.

JURISDICTION

The judgments of the Circuit Court of Appeals were entered April 13, 1936 (R. 31). A petition for writs of certiorari was filed on July 13, 1936, and was granted October 12, 1936. The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether floor "specialists" on the New York Stock Exchange are dealers in securities within the meaning of Article 105 of Treasury Regulations 74, and as such entitled to make their return upon an inventory basis.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved will be found in Appendix A, *infra*, pp. 20–21.

STATEMENT

The facts in this case, as stipulated (R. 13–17), may be summarized as follows:

Respondents are the members of the co-partnership of Albert Fried & Company, a brokerage firm. The firm was organized in March 1929. During the taxable year in question—the fiscal year ending January 31, 1931—it maintained an office and a staff of employees at 120 Broadway, New York City. Respondent Fried's interest in the firm was 95 percent and respondent Einhorn's 5 percent (R. 14, 15).

Both partners are members of the New York Stock Exchange, and the firm itself, which is also a member, was a floor "specialist" in thirteen stocks traded on the Exchange. As such, the firm accepted orders in these thirteen stocks from other members for execution. The firm filled these orders by buying and selling the securities for its own account or by matching like orders of a buyer and a seller.[1] The firm leased space on the floor of the Exchange, where it regularly transacted this business; it held itself out generally as a specialist in these thirteen stocks, and it was known to all members of the Exchange as such (R. 14).

The customers of the firm were 431 in number. Each of them was a member of the Exchange, who was acting either for himself or his customers. The sales were in lots ranging from 100 to a maximum of 5,700 shares. On numerous occasions the partnership purchased and sold the securities in which it specialized in order to maintain fair and equitable markets, and as far as possible it tried to prevent wide fluctuation in these securities. It always had on hand the securities in which it specialized (R. 15–16).

Schedule 1 (R. 16) attached to the stipulation discloses that, at the end of each month of the taxable year in question, the partnership owned from a maximum of 62,300 down to a minimum of 10,300

[1] The firm's activities also included the purchase and sale of stocks (R. 14). These transactions are not here involved.

shares of the stocks in which it specialized (R. 15). On the other hand, Schedule 2 (R. 16–17) submitted with the stipulation as typical of its daily transactions in these stocks (R. 15) discloses that the amounts on hand and purchased in the two securities therein named substantially equalled the amounts sold. All stocks which it purchased and sold were actually delivered. (R. 15.) Since its inception in March 1929 (R. 18), the partnership regularly inventoried unsold securities on hand at market value, and in its tax returns computed its net income on the same basis (R. 15).

The Commissioner of Internal Revenue determined that the partnership was not a dealer in respect of the securities in which it specialized and denied the partnership the right to make its return of income for the taxable year in question upon the inventory basis. This determination resulted in a deficiency determination in the taxes of each respondent (R. 6–7, 11–12). A majority of the Board (four members dissenting) sustained the Commissioner's determination (R. 23–24). This decision was reversed by the court below on the authority of its decision in the case of *Commissioner* v. *Stevens*, 78 F. (2d) 718.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the partners are dealers in securities so as to entitle them to the use of inventories in computing income.

2. In construing Section 22 (c) of the Revenue Act of 1928 as embracing the business of the partners.

3. In holding that the partners had shown themselves to be within the scope of Article 105 of Regulations 74.

4. In reversing the decision of the Board of Tax Appeals and remanding for further proceedings in accordance with its opinion.

SUMMARY OF ARGUMENT

The Commissioner has by regulation authorized "dealers in securities" to make their return of income upon the inventory basis. The regulation defines such dealer as a "merchant" in securities with an established place of business, regularly engaged in the purchase of securities for their resale to customers. It specifically provides that taxpayers who buy and sell securities for investment or speculation are not within the meaning of the rule. The regulation envisages a merchant who keeps a stock of securities on hand at a regular place of business for sale to customers for their use and consumption and not a broker who, in executing the brokerage orders of other brokers at his "post" on the floor of the Exchange, purchases from as well as sells the same securities to them in cyclical recurrence or matches the buy or sell orders of different brokers. The specialist's "post" on the Exchange is not a "regular place of business," and the other members of the Exchange are not his "customers," within the meaning of the regulation.

It was stipulated that on numerous occasions the partnership purchased and sold the securities in which it specialized for its own account in order to maintain the market. It does not, however, appear what part of the balances on hand at the end of each month resulted from such purchases, nor that any part of them resulted from purchases made in order to maintain a stock of securities to meet customer demands. Purchases made by it for any other purpose could only have been made for resale at a profit on an anticipated rise of the market. In its transactions, the partnership was a trader and not a merchant. It merely speculated for small profits. The petitioners have not overcome the heavy burden resting upon them to show not only that the Commissioner's determination was erroneous, but that it was plainly arbitrary.

ARGUMENT

Article 105 of Regulation 74 has been discussed at some length in the brief filed on behalf of the Commissioner of Internal Revenue in *Schafer* v. *Helvering*, Nos. 24–26, October Term, 1936. We there pointed out that the Article contemplates a *merchant* of securities with an established place of business who, like any other merchant, keeps on hand a stock in trade—in this case securities—which he replenishes from time to time with additional purchases in order to maintain on hand a supply sufficient to meet the expected demands of his customers.

The transactions of the Schafer Brothers firm, however, involved purchases of securities other than those in which it specialized. These securities were held by it for resale at a profit upon an anticipated or hoped for rise of the market. Such purchases and sales, we believe, were mere speculations and did not serve to classify that firm as a merchant. On the other hand, in the instant case, the purchases and sales of the respondents' firm were of securities in which it specialized. While the stipulation shows that the firm made some accumulations in such stocks, it fails to show what if any of them resulted from purchases which it made in the exercise of its specialist's functions. Since, however, some of these may have been made in the course of its business as a specialist—that is, in the performance of its functions as such—it will be necessary to consider such functions in some detail in order to show that a specialist on the New York Stock Exchange is not a merchant within the meaning of the regulation and should therefore not be permitted to make his return of income on the inventory basis.

The stipulation of facts describes in only meager outline the trade practices of the respondents' firm in carrying out its functions as a specialist. It does, however, state the salient fact that as such it filled the orders of other members by either purchasing or selling such stock for its own account or by matching like orders to purchase and sell (R. 14). The authorities on the functions and trade prac-

tices of the various members of the Stock Exchange furnish the same, though a more complete picture and one which we believe will be conducive to a better understanding of the subject in hand and therefore helpful to the Court in its determination of the question here presented.

Primarily, the specialist is a broker's broker, or a subbroker. As such, he executes orders of other members by buying or selling for them in the market the stock in which he specializes, just as the member who entrusts the order to him might himself do.[2] Under certain circumstances, however, he may execute these orders by purchasing the securities for his own account, or selling his own securities, as the case may be. It is this phase of the specialist's business which is relied upon by respondents to bring their firm within the limits of the phrase "dealers in securities." But these latter purchases and sales, in so far as they are made in connection with the specialist's functions, are generally asserted to be made chiefly in order to create and maintain a steady market.[3] Indeed,

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[2] See *The Work of the New York Stock Exchange*, by James E. Meeker, Economist of the New York Stock Exchange (1930 ed.) p. 212.

[3] *The Work of the Specialist*, by Dr. G. Wright Hoffman, being c. XII of *The Security Markets*, Twentieth Century Fund, Inc. (1935), p. 407 (a copy of this work may be found in the library of the Securities and Exchange Commission, Eighteenth Street and Pennsylvania Avenue, Washington, D. C.); *The Stock Market* (1934 Edition), by Dr. S. S. Huebner, pp. 55–56; The Report of the Hughes Committee, which is set out in full as an appendix to *The Stock Exchange*

this is the only reason disclosed by the stipulation for any of them[4] (R. 15). In other words, the specialist in this respect supplies an intermediate middleman variety of trading essential to the maintenance of a continuous, liquid market.[5] As was said in the Report of the Securities and Exchange Commission (Report on the Feasibility and Advisability of the Complete Segregation of the Functions of Dealer and Broker, made on June 20, 1936, pursuant to Section 11 (e) of the Securities Exchange Act of 1934), p. 14:

> The dealings of specialists in the securities in which they are registered constitute floor

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from Within (1913 Edition), by William Clark Van Antwerp, pp. 415, 426; *Short Selling*, Meeker, pp. 33, 102; and the Report of the Committee on Banking and Currency of the United States Senate on Stock Exchange Practices, being S. Rep. 1455, 73d Cong., 2d Sess., which states (p. 26), that the chief argument advanced in favor of permitting the specialist to trade for his own account is that such trading enables him to maintain a close and orderly market.

[4] Another reason for making such purchases and sales in connection with the specialist's functions adverted to by the authorities is to enable him to minimize his losses in the event of error on his part in the execution of an order or the insolvency of a customer. See the Report of the Securities and Exchange Commission on the Feasibility and Advisability of the Complete Segregation of the functions of Dealer and Broker made on June 20, 1936, pursuant to Section 11 (e) of the Securities Exchange Act, 1934, pp. 38–40, 42, 87. However, the stipulation does not mention this reason at all and, in any event, such transactions do not qualify the specialist as a merchant.

[5] See *The Security Markets*, Twentieth Century Fund, Inc., *supra*, p. 426.

> trading, as do also the transactions effected by all other members for their own account while on the floor.

With obviously the same thought in mind, Mr. Meeker points out (*The Work of the New York Stock Exchange* (1930 ed.)), p. 105, that when a new issue has once been "seasoned," the whole floating supply (which is the current surplus over investment demand, *op. cit.* p. 107)—

> continues to be sustained at all times by all the speculators in the market, including the floor trader, the specialist, the odd-lot dealers, and the speculating customers of commission houses.[6]

Clearly, the specialist is not here performing the function of *distribution,* but rather that of making a market. The process is described by Mr. Meeker as "a constant 'churning'" (*Op. cit.* p. 105). Thus, we have here an all but closed circular movement which results from purchases and sales of blocks of the same stock in cyclical recurrence from and to the same persons, everyone concerned being interested only in the profit that he may make upon a resale of the stock. This characterizes the business of making a market, and is not the straight-line transaction which is the essence of merchandising.

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[6] See to the same effect the excellent discussion of the meaning of a "continuous market," in *The Stock Market,* Huebner, *supra,* pp. 24 *et seq.*

Furthermore, the purchases and sales which the specialist makes for his own account are subject to an important restriction imposed by the rules of the Exchange, not in the very nature of things imposed upon any merchant. The specialist is forbidden to act as a broker and dealer in the same transaction. (See Chap. XI, Secs. 1 and 2 of the Rules of the Board of Governors of the New York Stock Exchange, set out in Appendix B, *infra,* pp. 22–23.) That is to say, he may not purchase or sell for his own account when he has an order to buy or sell for a customer; nor may he do so unless he first endeavors to purchase or sell the securities in the open market at an eighth lower or higher, as the case may be, than his own bid. In no event may he buy or sell unless the price is justified by the conditions of the market and the transaction is ratified by the member who gave him the order.[7] And when he does purchase or sell for his own account he merely trades with his "book," which

[7] See the Report of the Securities and Exchange Commission, *supra*, p. 8, especially note 46 on that page; also page 33 where, *inter alia*, the reasons for the inadequacy of this rule to protect the public are stated; also *The New York Stock Exchange*, an address in pamphlet form by Mr. Richard Whitney, president of the New York Stock Exchange (a copy of which may be found in the library of the Securities and Exchange Commission); *The Stock Market*, Huebner, *supra*, pp. 178–179; and *Short Selling*, Meeker, *supra*, pp. 33–34. The customer may also repudiate. *The Law of Stock Brokers and stock Exchanges*, Meyer, pp. 282–283, 487–488.

he is permitted to do. Incidentally, this enables him to make new highs and lows, to remove offerings and bids from the market, or merely to draw public attention by simply "churning" the market.[8] Thus there can be no doubt that these operations are at best incidental to the specialist's broker's-broker functions. Indeed they are said to constitute an important adjunct to his brokerage business;[9] in that they assist other members in executing their orders at a fair price, with the result that the specialist is rewarded by increased commission business.[10] This does not present the picture of a merchant.

It was not stipulated that it was necessary for the partnership to make purchases, or that it did in fact make them, in order to maintain on hand a stock of securities to meet customer demands. Undoubtedly the reason is that the conditions under which purchases and sales are made by specialists clearly indicate that no such necessity or purpose exists.

In other words, the specialist does not, as a regular thing, have or need long positions in any of the securities in which he specializes. To the contrary, the conclusion is inescapable that his ideal position

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[8] Report of the Securities and Exchange Commission, *supra*, p. 34.

[9] See *The Security Markets*, Twentieth Century Fund, Inc., *supra*, p. 406.

[10] See Report of Securities and Exchange Commission, *supra*, pp. 40–41; also the Report of The Committee on Banking and Currency of the United States Senate, *supra*, p. 25.

is to have nothing on the shelf, so to speak. This is the conclusion that has been reached by authorities on Exchange practices. For example, it is said in the Report of the Securities and Exchange Commission, *supra* (p. 33) that "Since the specialist under ordinary circumstances is willing to trade either as buyer or seller, his purchases and sales may be expected to be chiefly of an in-and-out character which tend to balance each other over brief periods."[11] The Report states that this view is not only generally confirmed by the specialists themselves, but by the tabulations of purchases and sales over the 25-week period investigated by the Commission, which is appended to the Report. This discloses that, more often than not, the specialists' weekly sales exceeded their purchases; that is, they had sold short. Schedule 2 attached to the stipulation in the instant case (R. 16–17), which was stipulated to be "a typical picture of the daily business done by the firm in the stocks in which it specializes" (R. 15), shows that the partnership's

[11] To the same effect see the Report of the Committee on Banking and Currency of the United States Senate, *supra*, p. 20; Dr. Kemper Simpson's *Studies*, [redacted], pp. 69–73; and particularly *The Security Markets*, Twentieth Century Fund, Inc., *supra*, p. 419, where it is said:

"The striking feature of the personal trading of specialists is the extent to which their purchases and sales balance for each group each week. The amount of position assumed during any one of these periods or groups is comparatively small in relation to the volume of trading done."

tradings were precisely of such daily in-and-out character.[12]

As already noted, the stipulation does not account for the large balances of stock which the partnership had on hand at the end of each month as shown in Schedule 1 (R. 16). There is not even an affirmative statement therein that they resulted entirely from the partnership's efforts to maintain the market. In any event, it cannot be assumed that the securities were accumulated and kept on hand to fill its brokerage orders. In so far as they may have been acquired for any other purpose, they could only have been intended for resale at a profit upon an expected rise of the market, as was done by the Schafer Bros. firm in the case of *Schafer* v. *Helvering, supra.*

On page 18 of our brief in the *Schafer* case we pointed out that the function of the specialist differs from that of the floor trader in several respects. Nevertheless, we believe that the purchases of the specialist for his own account in the securities in which he specializes are essentially no less speculative than those of the floor trader, who for this reason was denied the privilege of making a return of his income upon the inventory basis. *Seeley* v. *Helvering,* 77 F. (2d) 323. As was pointed out in the report of the Securities and Exchange Commis-

[12] It will be noted that no segregation is made between transactions representing the execution of orders for other members in the market and those representing their execution by purchases and sales for the partnership's own account.

sion, *supra* (p. 14), the dealings of the specialist in the securities in which he specializes constitute floor trading, as do the transactions effected by all other members for their own account while on the floor, and that (p. 17) it is generally conceded floor trading is essentially speculative in character, members ordinarily trading at frequent intervals and profiting from comparatively small price fluctuations.

Not only does respondents' firm lack the essential attributes of a merchant, but it also fails to meet the requirements of Article 105 that it must have "an established place of business" and "customers." The regulation, we submit, contemplates a place of business where merchandise is stocked for sale and persons go there to purchase. If this be true, the "post" [13] leased by the firm on the floor of the Exchange where, as stipulated (R. 15), it transacted its specialist business, was not such a place of business, and the brokers who came there were not customers.[14] No one goes to the specialist's post except other members of the exchange, and then not in expectation of buying securities

[13] For a description of the specialist's "post" see *Stock Market Theory and Practice* (1930 Edition), by R. W. Schabacker, financial editor of Forbes Magazine, pp. 29–30.

[14] It was further stipulated that the firm maintained an office at 120 Broadway with a staff of eight people employed to deliver securities and keep records, in addition to the two partners. (R. 15.) But it will hardly be contended that this was where it conducted its specialist business.

from a stock which is there kept on hand for sale at a price that the specialist has put upon them, but only to entrust him with the execution of their brokerage orders for their customers at market, or upon such condition as they may specify, which more often than not contemplates a rise or a fall in the market in the future.[15] The reason the other members place such orders with the specialist is that he is usually willing to make a market for them by buying the stock offered, or selling it if he has already purchased it, or by selling it short. His services are sought particularly in respect of orders which cannot be executed directly at the then current market, or are difficult to execute because of the inactivity or intense activity of the stock in question.[16] We submit that the specialist cannot be called a merchant, and, by the same token, he has no customers or place of business in the sense that a merchant has, and in the sense

[15] Most of the specialist's orders are said to be limited-price orders, which are orders to buy or sell at a fixed price or a better price if obtainable. See the Report of the Securities and Exchange Commission, *supra*, pp. 26, 33. He also executes "stop-loss orders." See *The Security Markets*, Twentieth Century Fund., Inc., pp. 232, 403. A stop-loss order is one to buy or sell at a stated amount at market if and when a transaction occurs at that price. See the Report of the Securities and Exchange Commission, *supra*, p. 26.

[16] See e. g., *The Stock Market*, Huebner, *supra*, p. 178; *The Work of the New York Stock Exchange*, Meeker, *supra*, pp. 212–213; *The Security Markets*, Twentieth Century Fund, Inc., pp. 232, 406.

contemplated by Article 105. See *Schafer* v. *Commissioner,* 83 F. (2d) 317, 319, now pending as Nos. 24–26, October Term, 1936.

The decision of the lower court in the instant case rests solely upon the authority of its own decision in the case of *Commissioner* v. *Stevens,* 78 F. (2d) 713, which affirmed the decision of the Board of Tax Appeals reported *sub nom. Estate of Harry E. R. Hall* v. *Commissioner,* 29 B. T. A. 1255, since, as it said, it could find no material difference whatever between that case and this, and believed that the facts here brought it within its decision in the *Stevens* case. The lower court in that case concluded that the dealings of the firm of Stevens & Legg, whose transactions were there involved, could not be said to be speculative only, saying (p. 714):

> The firm held at all times large blocks of stock which it sold in small lots to its various customers, numbering at least one hundred, at different times, and it sold at different prices. *It bought additional blocks of stock with which to replenish its supply.* At all times it had shares of the stock to be sold for profit or loss, as the case may be, on resale. *This was its wares or stock in trade.*

We think that the error of the court in both cases lies in the fact that it assumed that the firm in each bought additional stocks with which to replenish its supply and that this was its wares or stock in

trade.[17] And in the more recent case of *Vaughan* v. *Commissioner,* decided August 10, 1936, 85 F. (2d) 497, the court below went so far as to say that as specialists the petitioners there were required *by the practice* of the New York Stock Exchange to have on hand a supply of the stocks in which they dealt so as to round out orders in cases where the bid and asked prices did not match and to make deliveries where they were selling stocks to maintain a market. We know of no such requirement. Of course, the specialist must make deliveries if he sells stock, whether it be in order to maintain the market or for any other purpose, and in order to do so he must have the stock in his possession, or get it if he has sold it short. But, he is under no obligation to sell "where the bid and asked prices do not match," that is, in order to make a market under such circumstances.[18] It is submitted that the lower court in these cases labored under a complete misapprehension not only as to the functions and trade practices of the specialist, but as to the rules governing them.

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[17] The same decision of the Board was affirmed by the Circuit Court of Appeals for the Third Circuit *sub. nom. Commissioner* v. *Charavay*, 79 F. (2d) 406, which proceeded upon the ground that the controlling factor "is not the method by which the partnership obtained customers or made sales," but "it is the fact that the partnership purchased securities and held them not for investment or speculation, but for resale at a profit to anyone who desired to buy."

[18] See the Report of the Committee on Banking and Currency of the United States Senate, *supra*, p. 26.

The respondents have the heavy burden of establishing that the Commissioner's action in denying them the use of inventories was not only erroneous but plainly arbitrary. *Lucas* v. *Structural Steel Co.*, 281 U. S. 264; *Hamill* v. *Commissioner*, 30 B. T. A. 955. As we pointed out in the Government's brief in the *Schafer* case, *supra*, if it were otherwise, the Court would be concerning itself merely with the relative merits of accounting, which, as this Court has said, is not within its province. *Brown* v. *Helvering*, 291 U. S. 193, 204–205. We submit that this burden has not been met merely by showing that the partnership purchased and sold some, or even all, of the securities in question in the performance of its functions of a specialist.

CONCLUSION

The decision of the lower court should be reversed.

Respectfully submitted.

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November 1936.

APPENDIX A

Revenue Act of 1928, c. 852, 45 Stat. 791:

SEC. 22. GROSS INCOME.

* * * * *

(c) *Inventories.*—Whenever in the opinion of the Commissioner the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the Commissioner, with the approval of the Secretary, may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income.

Treasury Regulations 74:

ART. 105. *Inventories by dealers in securities.*—A dealer in securities, who in his books of account regularly inventories unsold securities on hand either—

(a) At cost;

(b) At cost or market, whichever is lower; or

(c) At market value,

may make his return upon the basis upon which his accounts are kept; provided that a description of the method employed shall be included in or attached to the return, that all the securities must be inventoried by the same method, and that such method must be adhered to in subsequent years, unless another be authorized by the Commissioner. For the purpose of this rule a dealer in securities is a merchant of securities, whether an individual, partnership, or corporation,

with an established place of business, regularly engaged in the purchase of securities and their resale to customers; that is, one who as a merchant buys securities and sells them to customers with a view to the gains and profits that may be derived therefrom. If such business is simply a branch of the activities carried on by such person, the securities inventoried as here provided may include only those held for purposes of resale and not for investment. Taxpayers who buy and sell or hold securities for investment or speculation and not in the course of an established business, and officers of corporations and members of partnerships who in their individual capacities buy and sell securities, are not dealers in securities within the meaning of this rule.

APPENDIX B

Rules of the Board of Governors of the New York Stock Exchange, Chapter XI

Members dealing for their own account

Sec. 1. No member, while acting as a broker, whether as a specialist or otherwise, shall buy or sell directly or indirectly for his own account or that of a partner, or for any account in which either he or a partner has a direct or indirect interest, securities the order for the sale or purchase of which has been accepted by him or his firm or a partner for execution; except as follows:

(Exception (a).) A member who, by reason of his neglect to execute an order, is compelled to take or supply on his own account, the securities named in the order, is not acting as a broker, and shall not charge a commission;

(Exception (b).) A member may only take the securities named in the order, provided he shall have offered the same in the open market, if bonds at ⅛ of 1%, and if stocks at ⅛ of one dollar, higher than his bid, and provided the price is justified by the condition of the market, and that the member who gave the order shall directly, or through a broker authorized to act for him, after prompt notification, accept the trade and report it;

(Exception (c).) A member may only supply the securities named in the order, provided he shall have bid for the same in the open market, if bonds

at ⅛ of 1%, and if stocks at ⅛ of one dollar, lower than this offer, and provided the price is justified by the condition of the market, and provided that the member who gave the order shall directly, or through a broker authorized to act for him, after prompt notification, accept the trade and report it;

(Exception (d).) A member, acting as a broker, is permitted to report to his principal a transaction as made with himself when he has orders from two principals to buy and to sell and not to give up, such orders being executed in accordance with Section 13 of Chapter I, in which case he must add to his name on the report the words "on order."

SEC. 2. When a member either takes the book of a specialist temporarily or an order from another member, he shall, while he is in possession of that book or order and for the balance of that particular day, stand in the same relation to the book or order as the specialist or other member himself.

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